1942

File No. O Lag /43

Legal Department

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Subject:—

Opinions under the

Land Acquisition Act, 1894.

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File No. O Lay 142

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C O N T E N T S.

Legal Department File No. O. Laq./ 43.

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2.	3593 17/5/43.	The Government of India Act, 1935, 30(2)- Whether Government can recover the amount of compensation to be paid the Khot on account of compensation for loss of his right to non agricultural assessment over the land, from the holder and his transferees.	3 - 6.
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5-Cs.

M.V.V.
9/7.

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K.S.R.
11/7

Office of the R.L.A.

The question for the R.L.A's consideration is whether the view of the Secretary, P.W.D., that since the lands are proposed to be acquired as concession for damage caused by abnormal floods, 15 per cent. extra for the compulsory acquisition need not be awarded in addition to the market value, is correct.

2. Proceedings under the Land Acquisition Act, 1894, for acquisition of land can be taken by Government only if the land is needed or likely to be needed for a public purpose (vide sections 4 and 6). Government is the sole judge to decide whether the land is needed for a public purpose. When proceedings for acquisition of land are taken under the Land Acquisition Act, 1894, in making an award the Government is to decide the proper amount of compensation subject to the principles of valuation laid down in the Act. Section 23(2) provides that in addition to the market value of the land, the Court shall in every case award a sum of fifteen per centum on such market value, in consideration of the compulsory nature of the acquisition. The provisions of section 23(2) are mandatory and the claimant would be entitled to be awarded 15 per cent. in addition to the market value. The fact that the land is acquired as a concession for damage caused by abnormal floods would afford no excuse for non-compliance with the provisions of section 23(2). The view of the Secretary, P.W.D., is not correct. It may be noted however that the market value referred to in section 23(1) is the market value of the land at the date of the notification under section 4(1). Presumably in this case that is the post-flood market value, which would be considerably less than the pre-flood value. It seems that it is 15 per cent. of this value that a Court would award. Perhaps this point has not been considered by P.W.D. in the valuation.

Sd/- P.N.Moos,
11/2.

Remembrancer of Legal Affairs.

U.R. to P.W.D. (Through R.D. and F.D.),No.1056, dated the 11th February 1943.

4-Cs.
M.V.V./9.7

The facts are that Government desired to acquire some land situated in the alienated village of Ville Parle, and for reasons which need not now be detailed, entered into an agreement with the holder whereunder Government was formally to acquire land admeasuring about 70 acres, and Mr. Paranjpe was to claim no compensation in respect there-of provided Government granted to him, out of this land, portion admeasuing about 53 acres on ryotewari tenure but free of occupancy price and betterment charges. The agreement which contained other clauses, to be adverted to presently, was recorded by G.R.R.D.No.5834.28 dated the 11th May 1931, and the provisions referred to above were, it appears duly acted upon; the land referred to was formally acquired under the Land Acquisition Act, 1898, and the portion thereof as stipulated was granted to Mr. Paranjpe who has apparently transferred parts thereof as building plots to other persons. In the acquisition proceedings the khot i.e. the alienee of the village claimed compensation in respect of the loss of his right to non-agriculetural assessment over the land. In Ref.No.7 of 1932, the Assistant Judge of Thana awarded to him a sum of Rs.20,000. Government having acquiesced in the decision of the Assistant Judge (see R.L.A's letter No.3397 dated 20.4.1942) will have to pay the amount of the compensation as decreed. The question for consideration is whether Government can recover this amount, or any part thereof from Mr. Paranjpe and his transferees.

2. Government's claim in this behalf rests, if at all, on clause 4 of the document executed by Mr. Paranjpe and assented to by Government by G.R.,R.D.No.5834/28 dated 11th May 1931. The agreement, however, is not in the form required by section 30(2) of the (repealed) Government of India Act, and for that reason would not be binding on the parties. (See Secretary of State for India is Council vs.Bhagwandas Goverdhandas 40 B.L.R.19; and Municipal Corporation of Bombay vs. Secretary of State, ILR 29 Bom.580, at p.606). Apart from this consideration it is arguable that the clause in question only binds Mr. Paranjpe to pay the

P.T.O.

assessment, agricultural or non-agriculatural mx as the case may be, which the khot would be entitled to levy in accordance with law, As the clause relates to payment of land revenue, the words "such amount on account of assessment" must be held to refer to the amount of land revenue leviable under the Bombay Land Revenue Code, 1879 and cannot be deemed to include the com - pensation ordered by the Court to be paid to the khot in x respect of his loss of the right to levy it.

3. The effect of the acquisition proceddings and the decree of the Assistant Judge is that all the land subject of the acquisition vested in Government free of any right on the part of the khot to levy land revenue thereof. The grant made to Mr. Paranjpe was presumably on the lines indicated in the agreement; that is, the grant was on ordinary ryotwari tenure and not revenue free. If so, in respect of the xkxd land so granted Mr. Paranjpe (and his assigns) continue to be liable in respect of the land revenue, and Government has the right to recover it. The right to xlevy assessment has by virtue of /xxxxxx the Asaistant Judge's decree passed from the Khot to Government. Clause 4(b) of the agreement appears to contemplate the case of Khot's right to levy assessment being affirmed and continued and not the transfer of the right to Government. It seems clear that the agreement did not have in mind the relief which the Court did in fact grant to the Khot and it is doubtful whether the Court would grant relief, even if the contract were valid.

4. It would also be well contended by Mr. Paranjpe that in view of the words in clause 4(b) "in x lieu of the arrangements in 4(a) above" he and his assignees would be entitled if he did pay Rs.20,000 to be exempt from the payment of any assessment to Government. It mx may well be that in that case in the long run it would be more profitable to be content with the assessment rather than persuade Mr. Paranjpe to pay the sum of Rs.20,000.

5. It is clear that the amount of Rs.20,000 is not recoverable as an arrear of land revenue.

6. In short there is no hope of recovering the amount by a suit and it is doubtful even whether any attempt should be made to recover it out of court.

Sd/- P.N.M.
15/5.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 3593, dated the 17th May 1943.

4-Cs.

M.V.V.
9/7.

No.5660.

Office of the
Remembrancer of Legal Affairs,
Bombay Castle,20th.August 1943.

Subject:- Reference No.5/42 in the District Court of Surat.

Memorandum.

With reference to the question raised in para1 of his letter No. 214 dated 28th June 1943, whether in a Reference under section 30 of the Land Acquisition Act, 1894, Government is a necessary or proper party, the Dist. Govt. Pleader, Surat is informed that under section 11 of the Land Acquisition Act, 1894, the Collector's award includes apportionment and when he proceeds to apportion any amount which he has determined as the market value of the land amongest several claimants, such persons may agree amongest themselves as to the manner of apportionment, or may not, Where they agree, the provisions of section 29 would apply. Where they do not agree, the Collector either makes an apportionment on the basis of the materials or information available to him, or when he is unable to do so, may make a joint award in the names of several claimants together. In the former case, the remedy of the party who disputes the Collector's apportionment may apply for a reference under section 18 of the Act, while in the latter case, section 30 would apply and the Collector would have to make a reference to the court suo motu, for an adjudication of the dispute, and at the same time would have to deposit the amount of compensation in the Court to which a Reference under section 18 could be submitted (vide section 31(2 Under section 30, the dispute for the adjudication of which a reference would be made, must be about the apportionment of the amount of compensation determined by the Collector and not about the adequacy of that amount. The subject-matter of a reference being thus only a dispute between interested persons as to the extent of their interests in the total amount, and not about the adequacy of that amount, the Collector is no party in a reference under section 30 just as he is no party in an apportionment reference under sec. 18 of the Act. The difference in the case of a Reference under sec. 30 in the matter of procedure is that there is no applicant who is in the position of plaintiff who would ordinarily have to lead the evidence. The Court has to decide on

whom the burden of proof lies and who should, in the circumstances of the case, lead the evidence. There is no specific mention whether sections 19 and 20 or section 21 should apply to a reference under section 30. In the absence of any other corresponding provisions, the same rules will presumably apply mutatis mutandis, The Collector should state the names of all persons interested in the dispute. (vide p.307 of Gupte's Land Acquisition Act). There is no separate provision corresponding to section 20, for references under section 30. There being no applicant in such cases, only the notices as required by section 20 (b) would issue (p.117 ibid). It will thus be evident that in References under section 30, there being no applicant, the present practice prevailing in Surat can hardly be deemed to be valid. A copy of letter No. 1798 of 43 dated 20-7-43 from the Dist. Govt. Pleaders enclosed. The Ahmedabad practice may be followed.

ID/-

For Remembrancer of Legal Affairs.

Copy to -

The Collector of Surat, for information, with reference to his endorsement No. L.A.Q./ S.R. - 26 dated 30th June 1943.

4-Cs.

M.V.V.
10/7

Office of the R.L.A.

The document under consideration reads as if it were the Land Acquisition officers award under sec. 11 of the Land Acquisition Act. There is declaration that the lands have been finally acquired and the document is signed by the Land Acquisition Officer. However, it is headed "Draft Award under section 11 of the Land Act of 1894". It is presumed that not withstanding the heading "Draft Award" the Assisstant Collector intended this document to be the Award itself. If he has in fact made his Award and merely forwarded it for Government's approval, then it would be improper for him to modify it in the manner suggested by the Consulting Surveyor. If on the other hand he intended the document to be merely a draft statement of the Award which he proposed to make, then it would be open to him to take into consideration the points raised by the Consulting Surveyor. It would be wrong for him to accept the Consulting Surveyor's views unless after due consideration he agrees with them. The Assistant Collector must exercise his own judgment. His opinion that it would be objectionable to delete all reference to the opinion of the Govt. Horticulturist and Panch valuations is right.

Id/- P.M.M.
20/9.

Remembrancer of Legal Affairs.

U.R. to R.D. No. 6347, dated the 21st September 1943.

4-Cs.

M.V.V.
10/7.

Office of the R. L.A.

The question for the consideration of the R.L.A. is whether in the cases in which the easement holders have made no reference under section 18 of the Land Acquisition Act and consequently there is no award by the District Court, execution proceedings can be taken to enforce the provisions of the Land Acquisition Officer's awards against those who still persist in exercising their easement rights.

2. Land Acquired under section 16 of the Land Acquisition Act, 1894, vests absolutely in the Crown free from all encumbrances including easements (Rashid Allidina vs. Jiwan Das Khemji (1942 1 Cal 488). If the easement holder is not satisfied with the award of compensation made by the Collector it is open to him to apply to the Collector to make a reference to the Court under section 18(1); but if he does not apply accordingly, the award made by the Collector would be binding on him. That award of the Collector would not however be an award of the Court under Part III and consequently it cannot be executed as a decree under section 26(2). Section 47 provides for a remedy in cases where the Collector is opposed or impended in taking possession under the Land Acquisition Act of any land; and "land" as defined in section 3 (a) includes benefits to arise out of land and such benefit may be an easement right over the land. If the easement is in the nature of discharge of roof water in the land acquired or of projection of side eaves or the right to open windows and doors section 47 will have no application and the surrender of the easement cannot be enforced under that provision. The only remedy is to institute a civil suit for an injunction.

Sd/- P.N.Moos,

Remembrancer of Legal Affairs.

U.R. to R.D. No. 8503, dated the 17th November 1943.

4-Cs.

M.V.V.
10/7.